

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
CHERYL HOLIDAY)	CASE NO. 13-76998-MHM
)	
Debtor)	
-----)	-----
)	
CHERYL HOLIDAY)	
)	
Movant)	
)	
v.)	CONTESTED MATTER
)	
BANK OF AMERICA HOME LOANS,)	
)	
Respondent)	

MOTION TO DETERMINE SECURED STATUS OF CLAIM AND TO STRIP LIEN

COMES NOW the Movant, Cheryl Holiday (hereinafter referred to as "Movant" or "Debtor"), in the above-styled Chapter 13 case, by and through counsel, and files this Motion to Determine Secured Status of Junior Security Interest and/or Lien Pursuant to 11 U.S.C. § 506 ("Motion") and shows this Court the following:

1.

This Motion is filed pursuant to 11 U.S.C. § 506(a) and (d), 11 U.S.C. § 1322 (b)(2w), and Fed.R.Bankr.P. 3012 and 9014 to treat junior security interest and/or lien held by Respondent in Movant's residential real property, located at 6420 Wedgewood Trace, Tucker, GA 30084, as a non-priority, unsecured liability for all purposes within the underlying Chapter 13 proceeding, with the voiding

and extinguishment of Respondent's security interest upon Movant receiving a Chapter 13 Discharge in this case.

2.

Jurisdiction is proper in the Court pursuant to 28 U.S.C. § 151, 157 and 1334.

3.

Venue is proper in this Court pursuant to 28 U.S.C. §1409.

4.

Movant filed a Voluntary Petition for relief under Chapter 13 of Title 11 of the United States Code on December 16, 2013, and is eligible for relief under 11 U.S.C. §109.

5.

Movant's residence (hereinafter referred to as "the residence") is located at 6420 Wedgewood Trace, Tucker, GA 30084.

6.

Movant's ownership interests in the residence is subject to two (2) separate mortgages in the form of deeds to secure debt as follows:

- 1) Movant's interest in the residence is subject to a first lien arising out of a mortgage in favor of Select Portfolio Servicing, with an outstanding balance of \$98,064.00. Proof of claim has not yet been filed.
- 2) Movant's interest in the residence is subject to a second junior lien arising out of a mortgage in favor of Respondent, with an outstanding balance of \$19,071.00 Proof of claim has not yet been filed.

7.

Movant has scheduled the value of the residence at the time of filing of this case at \$53,000.00.

8.

According to Zillow (www.zillow.com), the value of residence was estimated online to be \$53,568.00. (Exhibit A).

8.

Pursuant to 11 U.S.C. § 506(a), Respondent's second-priority mortgage referenced above is wholly unsecured. Pursuant to 11 U.S.C. § 506(d), the lien is subject to a "lien strip" and is void.

9.

Respondent, holding wholly unsecured and void second-priority lien, should be ordered to execute a lien release pursuant to the Eleventh Circuit's holding in the case of In re Tanner, 217 F.3d 1357 (11th Circ. 2000). 11 U.S.C. § 1322(b)(2) states:

11 U.S.C. § 1322. Contents of Plan

SUBCHAPTER II – THE PLAN

(b) Subject to subsections (a) and (c) of this section, the plan may –
(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

WHEREFORE, Movant respectfully pray for the following relief:

- a) That this Motion be filed, read, and considered;
- b) That this Honorable Court "strip off" and extinguish Respondent's wholly unsecured second mortgage lien pursuant to 11 U.S.C. § 506(a); and

- c) That effective upon entry of a discharge in the Debtor's Chapter 13 case, the lien of Bank of America Home Loans, be voided without further Order pursuant to 11 U.S.C. §506(d); and
- d) That should the Respondent file a Claim in the instant Chapter 13 case, it be reclassified as a general, unsecured Claim to receive a pro rata distribution with other general unsecured creditors through the Movant's Chapter 13 Plan; and
- e) That this Honorable Court grant such further relief as it may deem just and proper.

This 2nd day of January 2014.

Respectfully submitted,

By: /s/_____
Dan Saeger
Attorney for Debtor
Georgia Bar No. 680628

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Certificate of Service

I, **Dan Saeger**, certify that I am over the age of 18 and that on **January 2, 2014**, I served a copy of the foregoing **Order and Notice Regarding Strip Lien Motion** by first class U. S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated below. Respondent has been served by Certified Mail in accordance with Fed. R. Bankr. P. 7004(b)(3) and 7004(h) respectively.

Cheryl Holiday
Debtor
6420 Wedgewood Trace
Tucker, GA 30084

Adam M. Goodman
Adam M. Goodman
Chapter 13 Trustee
Suite 200
260 Peachtree Street
Atlanta, GA 30303

Bank of America Home Loans
CEO Kevin Watters
3415 Vision Drive
Columbus, OH 43219

Bank of America Home Loans
PO Box 650070
Dallas, TX 75265-0070

Bank of America Home Loans
4161 Piedmont Parkway
Greensboro, NC 27410

Select Portfolio Servicing
3815 S West Temple Street
Salt Lake City, UT 84115

Select Portfolio Servicing, Inc.
CEO - Mr. Matt Hollingsworth
3815 S. West Temple
Salt Lake City, UT 84115-4412

This 2nd day of January 2014.

DAN SAEGER

Counsel for Movant

Georgia Bar Number 680628

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